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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	Chapter 9
NEW YORK CITY OFF-TRACK BETTING CORPORATION,	)	Case No. 09-17121 (MG)
Debtor.	)	**Re: Docket No. 242**

YONKERS RACING CORPORATION'S STATEMENT IN SUPPORT OF NEW YORK CITY OFF-TRACK BETTING CORPORATION'S MOTION TO DISMISS ITS CHAPTER 9 CASE

TO: THE HONORABLE MARTIN GLENN,
UNITED STATES BANKRUPTCY JUDGE:

Yonkers Racing Corporation ("Yonkers") submits this statement in support of the motion of New York City Off-Track Betting Corporation (the "Debtor") requesting that this Court dismiss the chapter 9 case [Docket No. 242] (the "Motion to Dismiss"). In support of this statement, Yonkers respectfully represents as follows:

1. The Debtor has abandoned its plan of adjustment and sought to dismiss this case. In fact, the Debtor has shut down all of its operations, is in the process of winding down its affairs, and stated its intention not to pursue any other plan of adjustment. Under these circumstances, the case must be dismissed.

2. Section 930 of the Bankruptcy Code, which governs dismissal, provides in pertinent part:

> (a) After notice and a hearing, the court may dismiss a case under this chapter for cause, including –
>
> (1) want of prosecution;
>
> (2) unreasonable delay by the debtor that is prejudicial to creditors;
>
> (3) failure to propose a plan within the time fixed under section 941 of this title;
>
> (4) if a plan is not accepted within any time fixed by the court; . . .
>
> (b) The court shall dismiss a case under this chapter if confirmation of a plan under this chapter is refused.

11 U.S.C. § 930.

3. While the statute is silent as to the standard the court is to apply when the debtor seeks a voluntary dismissal, one court has treated a chapter 9 debtor's voluntary request for dismissal as "cause" for permissive dismissal under section 930(a). *In re Richmond Unified Sch. Dist.*, 133 B.R. 221, 224 (Bankr. N.D. Cal. 1991). The court expounded that a chapter 9 debtor is "*entitled to an order of dismissal* without necessity of an evidentiary showing that dismissal would be in the best interest of creditors." *Id.* (emphasis added). Though it framed a request for voluntary dismissal as cause for permissive dismissal, the court reasoned that it was required to dismiss the case because "[a]ny other result would be anomalous and only serve to postpone the inevitable." *Id.*

4. Furthermore, section 930(b) requires dismissal in cases where confirmation of a chapter 9 plan is refused. Although confirmation of a plan has not yet been technically refused, confirmation of a plan is futile. The Debtor here has manifested its intent not to reorganize. In fact, the Debtor has completely shut down, rendering reorganization no longer viable. The Debtor reaching the conclusion on its own that plan confirmation is not viable differs little from

the Debtor having pursued a futile plan that the Court later refused to confirm. The Court should thus treat the Debtor's refusal to pursue confirmation of a plan also as grounds for mandatory dismissal under section 930(b) of the Bankruptcy Code.

5. The only parties who oppose dismissal do so on the basis that a trustee should be appointed to pursue avoidance actions.[1] Appointment of a trustee, even if appropriate (which Yonkers submits more fully in its Objection to the Motion for Appointment of Trustee it is not), is not grounds to deny dismissal of the case. Unlike other chapters of the Bankruptcy Code where alternatives to a debtor's plan are available, such as conversion or prosecution of a plan by a non-debtor party, under chapter 9, only the Debtor may pursue a plan.[2] If the Debtor fails to do so, dismissal of the case is simply inevitable.

6. Indeed, leaving the case open because of the appointment of a trustee is both impractical and a waste of judicial resources given (i) any amounts recovered from avoidance actions against the NY Tracks would flow to the Debtor as this Court has held that no bankruptcy estate is created in a chapter 9 case,[3] (ii) the Bankruptcy Court cannot direct the Debtor how to use or distribute such proceeds,[4] and (iii) only a Debtor – not a trustee – may file a plan of adjustment. Accordingly, even if, after years of litigation and appeals, a trustee was successful in avoiding any transfers, in absence of a plan that only the Debtor may pursue, the Court could not ensure that any proceeds recovered from those suits would be distributed to the Debtor's creditors.

7. In light of the foregoing, the case must be dismissed.

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[1] *See, e.g.,* Motion of District Council 37, Local 2021, For Appointment of Trustee [Docket No. 247].
[2] *See* 11 U.S.C. § 941 ("The debtor shall file a plan for the adjustment of the debtor's debts.").
[3] *In re New York City Off-Track Betting Corp.*, 434 B.R. 131, 141-42 (Bankr. S.D.N.Y. 2010).
[4] *See* 11 U.S.C. § 904 ("Notwithstanding any power of the court, . . . the court may not . . . interfere with . . . any of the property or revenues of the debtor . . . .").

WHEREFORE, Yonkers respectfully requests that the Court grant the Debtor's motion to dismiss the chapter 9 case and grant such further relief as the Court deems appropriate.

Dated: New York, New York

January 11, 2011

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By: *__/s/ Gerard Uzzi__*
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